

Tuesday, August 29, 2006

The Board met at its offices at 450 N Street, Sacramento, at 9:42 a.m., with Mr. Chiang, Chair, Ms. Yee and Mr. Leonard present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

SALES AND USE TAX APPEALS HEARINGS

Marcella Maria Rosales, 308469 (KH)

1-1-03 to 11-17-03, \$1,404.00 Tax, \$140.40 Failure to File Penalty

For Petitioner: No Appearance

For Sales and Use Tax Department: Carla Caruso, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Issues: Whether petitioner is liable for the unreported taxable sales.

Whether petitioner is entitled to relief of the failure-to-file penalty.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition be postponed as requested by appellant.

Mikhail Obolsky, 186902 (BH)

7-1-97 to 12-31-99, \$122,127.76 Tax, \$12,506.63 Negligence Penalty

For Petitioner: No Appearance

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has provided evidence that would entitle him to further adjustments to the cost of goods sold for supplies (findings) used in repair operations.

Whether the evidence supports a further reduction in disallowed deduction for bad debts.

Whether petitioner was negligent.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

SPECIAL TAXES APPEALS HEARING

Qwest Communications Corporation, 246379 (ET)

10-1-98 to 10-31-03, \$857,952.78 Fee, \$00.00 Negligence Penalty

For Petitioner: Peter Michaels, Attorney

Larry McMillin, Taxpayer

For Property and Special Taxes Department: Carolee Johnstone, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Tuesday, August 29, 2006

Issues: Whether the access line charge is properly included in the measure of the 911 surcharge.

Whether the Universal Service Fund charge is properly included in the measure of the 911 surcharge.

Whether the Telecommunications Relay Service (TSR) charge is properly includable in the amount of service use charges subject to the 911 surcharge if it is bundled with another charge that is subject to the 911 surcharge.

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition be submitted for decision.

PUBLIC HEARINGS

Proposed Amendments to Sales and Use Tax Regulation 1602, *Food Products*

Robert Lambert, Acting Assistant Chief Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the amendments to Regulation 1602, which are proposed to provide a clear standard for taxing sales of combination packages that include food and nonfood products (such as gift baskets) sold for a single price and to eliminate obsolete language in subdivisions (a)(1), (a)(2), (a)(3), and (a)(4) of Regulation 1602. This is a continuation of the public hearing held July 18, 2006. (Exhibit 8.3.)

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Mr. Chiang, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard voting no, Mr. Parrish absent, the Board adopted the amendment to Regulation 1602, Food Products, as published.

Exhibits to these minutes are incorporated by reference.

LEGAL APPEALS MATTERS, CONSENT

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board made the following orders:

John Raymond Collins and Lisa House, 170436 (UT)
8-14-98, \$58,371.63 Tax

Action: Grant the petition for rehearing as recommended by the Appeals Division.

Tri-Air, Inc., 240935 (KHO)

1-1-95 to 12-31-01, \$3,727.53 Tax, \$1,428.72 Failure to File Penalty

Action: Deny the petition for rehearing as recommended by the Appeals Division.

Tuesday, August 29, 2006

Minshaw Brothers Steel Cnstrt, Inc., 249882 (FH)
10-1-99 to 3-31-03, \$269,615.64 Tax, \$14,385.69 Failure to File Penalty
Action: Redetermine as recommended by the Appeals Division.

Mohamad Kurdmisto, 354480 (ET)
April 11, 2006 Seizure Date, \$172.50 Approximate Value
Action: Determined that staff properly seized the cigarettes.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matter: *Downey Toy Company, 306793; Lisa M. Fagundes, 317594; Peter M. Soley, 310303; and, Robert Eugene Wesley, 317301.*

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board made the following orders:

Binoy K. Bordoloi and Bani Bordoloi, 318013
2002, \$1,069.46 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Shenethia V. Carter, 296581
2001, \$348.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Downey Toy Company, 306793
Action: The Board took no action.

Lisa M. Fagundes, 317594
Action: The Board took no action.

William B. Feinberg and Judith L. Feinberg, 330459
1999, \$112,389.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Fosfo, Inc., 308287
2003, \$800.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

David J. Hopper and Catherine E. Hopper, 318263
1999, \$2,592.68 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Tuesday, August 29, 2006

Susan Jarett, 304297

2002, \$865.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Todd Katz, 312812

1997, \$2,581.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Michele Kinchen, 311241

2002, \$1,817.50 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Tat H. Kwok and Ada M. Kwok, 317429

1999, \$228.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Columbus O. Okoroike, 318155

2002, \$240.00 Assessment

Action: Modify the action with concession by the Franchise Tax Board.

Lanelita Quirante, 308808

2003, \$2,717.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Wayne Roland, 315812

1995, \$651.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Susan Scanlan, 303475

1997, \$36,652.76 Claim for Refund

1998, \$9,714.11 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Peter M. Soley, 310303

Action: The Board took no action.

Fakhradin Mirian and Laura Mirian, 305200

2000, \$2,452.00 Assessment

Action: Deny the petition for rehearing.

Stephen D. Moses, 268510

1992, \$61,657.00 Tax, \$15,414.25 Late Filing Penalty

Action: Deny the petition for rehearing.

Robert Eugene Wesley, 317301

Action: The Board took no action.

Tuesday, August 29, 2006

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

The Board deferred consideration of the following matter: *Marcos Prieto, 339280.*

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board made the following orders:

Edward A. Kandrak, 329465

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Marcos Prieto, 339280

Action: The Board took no action.

Rebecca Richardson, 325876, 332501

2004, \$102.50

Action: Sustain the action of the Franchise Tax Board.

Wilma F. Williams, 338994

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES/INTEREST, DENIALS OF CLAIMS FOR REFUND AND DENIALS OF RELIEF OF PENALTIES/INTEREST, CONSENT

The Board deferred consideration of the following matters: *James Gamblin, 345457; K-Mart Corporation, 353218; Western Digital Technologies, Inc., 238711; Halliburton Energy Services, Inc., 356793; New Vision Technologies, Inc., 334836; and, Calgen Project Equipment Finance, 355514.*

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties/Interest, Denials of Claims for Refund and Denials of Relief of Penalties/Interest, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, Ms. Mandel not participating in accordance with Government Code section 87105 in *Mercedes-Benz USA, LLC, 353825*; the Board made the following orders:

A. M. Castle & Co., 311279 (OHA)

10-1-00 to 9-30-03, \$67,166.72

Action: Approve the redetermination as recommended by staff.

Tuesday, August 29, 2006

James Gamblin, 345457 (EH)

Action: The Board took no action.

Pall Filtration/Separations Grp., 315227 (OHB)

4-1-99 to 3-31-03, \$284,487.09

Action: Approve the redetermination as recommended by staff.

Gold Key Lease, Inc., 290116 (OHA)

7-1-01 to 6-30-02, \$51,314.80

Action: Approve the redetermination as recommended by staff.

Matrix Technologies, Inc., 335120 (OHB)

4-1-02 to 3-31-05, \$54,767.62

Action: Approve the redetermination as recommended by staff.

Autozone West, Inc., 356016 (OHA)

1-1-05 to 3-31-05, \$56,251.10

Action: Approve the relief of penalty/interest as recommended by staff.

Pitney Bowes Mgmt Services, Inc., 354286 (OHB)

1-1-99 to 12-31-02, \$54,526.46

Action: Approve the relief of penalty/interest as recommended by staff.

K-Mart Corporation, 353218 (OHA)

Action: The Board took no action.

Honest Jiup Chung, 134391 (AS)

1-1-93 to 12-31-96, \$50,501.41

Action: Approve the denial of claim for refund as recommended by staff.

Nissan North America, Inc., 355454 (AS)

4-1-03 to 6-30-04, \$57,486.86

Action: Approve the denial of claim for refund as recommended by staff.

Western Digital Technologies, Inc., 238711 (EAA)

Action: The Board took no action.

Raytheon Technical Services, Company, 331371 (OHC)

7-1-02 to 3-31-05, \$60,000.00

Action: Approve the denial of claim for refund as recommended by staff.

Mercedes-Benz USA, LLC., 353825 (OHB)

7-1-98 to 6-30-01, \$677,133.21

Action: Approve the denial of claim for refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Tuesday, August 29, 2006

Northrop Grumman Systems, Corporation, 355456 (AS)

1-1-02 to 12-31-02, \$53,018.54

Action: Approve the denial of claim for refund as recommended by staff.

Halliburton Energy Services, Inc., 356793 (OHC)

Action: The Board took no action.

New Vision Technologies, Inc., 334836 (EAA)

Action: The Board took no action.

Kovarus, Inc., 341887 (CH)

4-1-05 to 6-30-05, \$95,194.00

Action: Approve the denial of claim for refund as recommended by staff.

Benjamin Cruz, 330251 (EH)

1-1-03 to 12-31-03, \$183,811.00

Action: Approve the denial of claim for refund as recommended by staff.

Calgen Project Equipment Finance, 355514 (GH)

Action: The Board took no action.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

The Board deferred consideration of the following matters: *Saddleback Rcratnl Vehicles, Inc.*, 356190; *Halliburton Energy Services, Inc.*, 207473; *Light & Sound Design, Inc.*, 354454; *Virgin Mobile USA, LLC.*, 290234; and, *Valley Imports, Inc.*, 345180.

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, Mr. Chiang not participating in *KCI USA, Inc.*, 356737; *21st Century Insurance Company*, 271146; and, *Edison Material Supply, LLC.*, 328966; Ms. Mandel not participating in accordance with Government Code section 87105 in *Chevrolet Motor Division*, 352144; *Mercedes-Benz USA, LLC.*, 347473; and, *Mercedes-Benz USA, LLC.*, 143851; the Board made the following orders:

Linguist & Craig Hotels & Resorts, 354547 (EA)

1-1-02 to 10-18-04, \$85,043.69

Action: Approve the credit and cancellation as recommended by staff.

Saddleback Rcratnl Vehicles, Inc., 356190 (EAA)

Action: The Board took no action.

Tuesday, August 29, 2006

Lyle Industries, Inc., 256027 (OHA)

1-1-96 to 6-30-02, \$436,834.69

Action: Approve the credit and cancellation as recommended by staff.

Sensitech, Inc., 357054 (OHB)

4-1-98 to 12-31-98, \$104,662.09

Action: Approve the credit and cancellation as recommended by staff.

California State University, L.A., 354716 (AA)

7-1-02 to 6-30-05, \$51,415.74

Action: Approve the refund as recommended by staff.

Deluxe Laboratories, Inc., 356450 (AS)

4-1-00 to 3-31-04, \$1,171,911.21

Action: Approve the refund as recommended by staff.

Micro Publications Systems, 199098 (OHC)

4-1-00 to 12-31-03, \$2,449,365.52

Action: Approve the refund as recommended by staff.

Crossfield Products Corporation, 341132 (AA)

10-1-01 to 12-31-04, \$59,829.07

Action: Approve the refund as recommended by staff.

Nissan North America, Inc., 312114 (AS)

4-1-03 to 6-30-04, \$152,184.36

Action: Approve the refund as recommended by staff.

Nissan North America, Inc., 341579 (AS)

4-1-04 to 12-31-05, \$674,180.58

Action: Approve the refund as recommended by staff.

Acco Engineered Systems, Inc., 353379 (AC)

10-1-05 to 12-31-05, \$138,243.85

Action: Approve the refund as recommended by staff.

City-County of San Francisco, 305431 (BH)

4-1-99 to 3-31-02, \$674,940.19

Action: Approve the refund as recommended by staff.

Williams-Sonoma, Inc., 313400 (BH)

10-1-99 to 12-31-02, \$491,996.84

Action: Approve the refund as recommended by staff.

Tuesday, August 29, 2006

Roger's Gardens Newport Beach, 303282 (EAA)

7-1-02 to 3-31-04, \$133,881.59

Action: Approve the refund as recommended by staff.

Verteq, Inc., 254730 (EA)

10-1-01 to 12-31-01, \$75,996.14

Action: Approve the refund as recommended by staff.

Dr. B's Chicken, 318321 (EAA)

1-1-99 to 12-31-02, \$108,855.43

Action: Approve the refund as recommended by staff.

GKN Aerospace Chem-tronics, Inc., 353420 (FH)

4-1-02 to 3-31-05, \$155,989.59

Action: Approve the refund as recommended by staff.

Cadence Design Systems, Inc., 269634 (GH)

4-1-01 to 3-31-04, \$94,792.22

Action: Approve the refund as recommended by staff.

Applied Signal Technology, Inc., 334231 (GH)

10-1-02 to 3-31-05, \$144,228.58

Action: Approve the refund as recommended by staff.

Sacramento A-One Door, 354127 (KH)

10-1-02 to 9-30-05, \$52,503.34

Action: Approve the refund as recommended by staff.

Calgon Carbon Corporation, 348175 (OHB)

10-1-05 to 12-31-05, \$71,213.96

Action: Approve the refund as recommended by staff.

KCI USA, Inc., 356737 (OHC)

10-1-01 to 3-31-05, \$65,647.82

Action: Approve the refund as recommended by staff. Mr. Chiang not participating.

Sara Lee Corporation, 356564 (OHA)

4-1-05 to 6-30-05, \$101,673.73

Action: Approve the refund as recommended by staff.

Ford Motor Company, 352140 (OHA)

10-27-05 to 2-24-06, \$736,952.06

Action: Approve the refund as recommended by staff.

Tuesday, August 29, 2006

Chevrolet Motor Division, 352144 (OHA)

6-21-05 to 11-25-05, \$939,794.06

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Mercedes-Benz USA, LLC., 347473 (KH)

3-30-06 to 4-18-06, \$177,445.00

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

21st Century Insurance Company, 271146 (AC)

4-1-01 to 3-31-04, \$599,006.60

Action: Approve the refund as recommended by staff. Mr. Chiang not participating.

Cisco Systems Capital Corporation, 332637 (GH)

4-1-00 to 12-31-03, \$5,169,753.70

Action: Approve the refund as recommended by staff.

Sully-Miller Contracting Company, 348518 (EA)

4-1-02 to 3-31-05, \$203,315.38

Action: Approve the refund as recommended by staff.

Williams-Sonoma Stores, LLC., 330239 (BH)

10-1-99 to 12-31-02, \$775,464.35

Action: Approve the refund as recommended by staff.

National Diabetic Pharmacies, Inc., 315109 (OHB)

4-1-02 to 6-30-04, \$101,044.08

Action: Approve the refund as recommended by staff.

Edison Material Supply, LLC., 328966 (EAB)

10-1-04 to 6-30-05, \$749,724.98

Action: Approve the refund as recommended by staff. Mr. Chiang not participating.

John Zink Company, LLC., 250023 (OHA)

10-1-00 to 3-31-05, \$73,887.77

Action: Approve the refund as recommended by staff.

Marubeni Disc Systems, Inc., 347469 (EAA)

10-1-05 to 12-31-05, \$69,825.09

Action: Approve the refund as recommended by staff.

Mercedes-Benz USA, LLC., 143851 (OHB)

7-1-98 to 6-30-01, \$231,514.21

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Tuesday, August 29, 2006

Seagate Technology, LLC., 306803 (GHC)

7-1-01 to 12-31-02, \$157,568.27

Action: Approve the refund as recommended by staff.

World Wide Technology, Inc., 326201 (OHA)

4-1-05 to 9-30-05, \$246,258.82

Action: Approve the refund as recommended by staff.

Nabisco, Inc., 170561 (OHA)

10-1-96 to 9-30-99, \$162,387.33

Action: Approve the refund as recommended by staff.

Halliburton Energy Services, Inc., 207473 (OHC)

Action: The Board took no action.

Northrop Grumman Systems Corporation, 250579 (AS)

1-1-02 to 12-31-02, \$185,926.38

Action: Approve the refund as recommended by staff.

Ascent Media Mgmt Services, Inc., 325571 (AC)

9-29-97 to 12-31-00, \$589,772.93

Action: Approve the refund as recommended by staff.

Travis Credit Union, 328882 (JHF)

4-1-05 to 12-31-05, \$209,660.47

Action: Approve the refund as recommended by staff.

Kemiron Pacific, Inc., 353483 (OHC)

1-1-04 to 3-31-04, \$86,530.84

Action: Approve the refund as recommended by staff.

Light & Sound Design, Inc., 354454 (AR)

Action: The Board took no action.

Applied Graphics Technologies, Inc., 353063 (AA)

7-1-00 to 6-30-03, \$285,917.20

Action: Approve the refund as recommended by staff.

N-Care, LLC., 352126 (EA)

10-1-02 to 9-30-05, \$52,700.89

Action: Approve the refund as recommended by staff.

Virgin Mobile USA, LLC., 290234 (OHB)

Action: The Board took no action.

Tuesday, August 29, 2006

Residence Inn By Marriott, 349734 (OHB)

3-29-03 to 5-23-03, \$89,899.72

Action: Approve the refund as recommended by staff.

Overland Real Est Limited Partner, 315495 (AS)

1-1-03 to 3-31-05, \$207,728.05

Action: Approve the refund as recommended by staff.

Valley Imports, Inc., 345180 (FHA)

Action: The Board took no action.

Cytac Limited Partnership, 295855 (OHB)

10-1-03 to 9-30-03, \$108,891.14

Action: Approve the refund as recommended by staff.

Central Air Conditioning, Inc., 349729 (KHO)

10-1-05 to 12-31-05, \$58,393.16

Action: Approve the refund as recommended by staff.

Morningstar, Inc., 265230 (OHA)

7-1-00 to 12-31-03, \$443,326.33

Action: Approve the refund as recommended by staff.

Altaone Federal Credit Union, 340781 (ARH)

4-1-02 to 12-31-05, \$135,212.72

Action: Approve the refund as recommended by staff.

Kern Schools Federal Credit Union, 339637 (ARH)

1-1-02 to 12-31-04, \$676,556.24

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, RELIEF OF PENALTIES, CONSENT

With respect to the Special Taxes Matters, Relief of Penalties, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board made the following order:

Bel Air Mart, 354726 (ET)

2-6-06 to 2-27-06, \$51,756.30

Action: Approve the relief of penalty as recommended by staff.

Tuesday, August 29, 2006

LEGAL APPEALS MATTERS, ADJUDICATORY

David Elias Pardo, 172990

7-1-97 to 6-30-00, \$19,293.37 Tax

Considered by the Board: May 17, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition for rehearing be denied as recommended by the Appeal Division.

Chris T. Attkisson and Loretta P. Attkisson, 235821 (KHO)

10-1-98 to 6-30-02, \$106,929.63 Tax, \$10,692.99 Negligence Penalty

Considered by the Board: March 28, 2006

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Tensor Group, Inc., 281211 (OHA)

4-1-95 to 3-31-03, \$00:00 Tax, \$00.00 Negligence Penalty

Considered by the Board: April 18, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Nortel Networks, Inc., 150425 (OHB)

1-1-94 to 12-31-97, \$6,319,640.00

Considered by the Board: June 30, 2005

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating, Mr. Parrish absent, the Board ordered that the petition for rehearing be denied as recommended by the Appeal Division.

Michael A. Olin, 252307 (UT)

11-10-01, \$10,050.64 Tax, \$00.00 Failure to File Penalty

Considered by the Board: March 7, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Chiang, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition for rehearing be deferred to the next meeting.

Tuesday, August 29, 2006

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS,
ADJUDICATORY**

Apple Computer, Inc., 152016

1989, \$1,258,506.00 Assessment

Considered by the Board: Formal Opinion

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Action: The Board took no action due to lack of quorum.

Bradley Mart and Madeline Zayas-Mart, 313041

1999, \$3,507.00 Claim for Refund

Considered by the Board: June 13, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Chiang and duly carried, Mr. Chiang, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel voting no, Mr. Parrish absent, the Board adopted a decision reversing the action of the Franchise Tax Board as recommended by staff

**HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS,
ADJUDICATORY**

Anna Ellis, 282922

2000, \$600.00

Considered by the Board: December 5, 2005

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and duly carried, Mr. Chiang, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel voting no, Mr. Parrish absent, the Board adopted a decision reversing the action of the Franchise Tax Board as recommended by staff.

**SALES AND USE TAX MATTERS, RELIEF OF PENALTIES/INTEREST,
ADJUDICATORY**

Banctec Third Party Maint., Inc., 347876 (OHC)

4-1-05 to 4-30-05, \$70,535.70

Considered by the Board: June 13, 2006

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved the relief of penalty/interest as recommended by staff.

Tuesday, August 29, 2006

Ms. Mandel left the Boardroom and Mr. Chivaro entered on behalf of Mr. Westly in accordance with Government Code section 7.9.

SALES AND USE TAX MATTERS, REFUNDS, ADJUDICATORY

The Disney Store, Inc., 342078 (AC)

10-1-99 to 11-20-04, \$685,304.12

Considered by the Board: July 18, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Mr. Leonard and Mr. Chivaro voting yes, Mr. Chiang not participating, Mr. Parrish absent, the Board approved the refund as recommended by staff.

Mr. Chivaro left the Boardroom and Ms. Mandel entered on behalf of Mr. Westly in accordance with Government Code section 7.9.

SPECIAL TAXES MATTERS, REDETERMINATION, ADJUDICATORY

Atlantic Richfield Company, 345099 (MT)

7-1-98 to 12-31-01, \$86,982.77

Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Parrish absent, the Board approved the redetermination as recommended by staff.

TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

PROPERTY TAX MATTERS

Board Roll Changes

2003, 2004, 2005 and 2006 State-Assessed Property Rolls

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Parrish absent, the Board approved corrections to the 2003, 2004, 2005 and 2006 Board Rolls of State-Assessed Property as recommended by staff (Exhibit 8.4).

Tuesday, August 29, 2006

Private Railroad Car Tax Refund

Dana Railcare

2005, \$141.61

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Parrish absent, the Board granted the private railroad car tax refund as recommended by staff.

OFFERS-IN-COMPROMISE RECOMMENDATIONS

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved the Offers in Compromise of *Hayat Jalala*; and, *Edith Gomez*; as recommended by staff.

CHIEF COUNSEL MATTERS**RULEMAKING****Status Report on Proposed Amendments to State Board of Equalization Rules of Practice**

Ian Foster, Tax Counsel, Legal Department, provided a status report on proposed amendments to State Board of Equalization Rules of Practice, Chapter 4, *Appeals from Actions of the Franchise Tax Board* (Exhibit 8.5).

ADMINISTRATIVE SESSION**ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board made the following orders:

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California (Exhibit 8.6).

Maria T. Berlonghi, Business Taxes Representative, Laguna Hills Branch Office
Beverly "Sue" Coty, Business Taxes Administrator III, Sales and Use Tax
Department

Dorothy L. Stevens, Tax Technician III, Santa Ana District Office

Mary E. Trebbien, Senior Tax Auditor, Santa Ana District Office

Margaret L. Wong, Senior Tax Auditor, Santa Ana District Office

Tuesday, August 29, 2006

Action: Approve the Board Meeting Minutes of May 17, 2006.

Action: Approve index for coins and bullion bulk sale threshold for inflation, based on the (June to June) California Consumer Price Index (CCPI) (RTC § 6355), as recommended by staff. (Exhibit 8.7.)

Action: Approve the 2006-07 Emergency Telephone User's Surcharge Rate of .50 percent and publish the rate in these Board meeting minutes (Exhibit 8.8).

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Ramon Hirsig, Executive Director, provided updates regarding electronic services and the headquarters' windows project.

Budget Change Proposals

Karen Johnson, Deputy Director, Administration Department, made introductory remarks regarding the budget change proposals (Exhibit 8.9).

Action: Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved Alternative 1, BCP No. 1, *Consumer Use Tax Section Revenue Enhancement*, as recommended by staff.

Speaker: David R. Doerr, representing Cal Tax, commented on BCP No. 2, *U.S. Customs Program Augmentation*.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved Alternative 1, BCP No. 2, *U.S. Customs Program Augmentation*, as recommended by staff.

Action: Mr. Leonard moved approval of Alternative 2, BCP No. 4, *Alcoholic Beverage Tax Program Workload*. The motion failed for lack of a second.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Chiang, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard voting no, Mr. Parrish absent, the Board approved Alternative 1, BCP No. 4, *Alcoholic Beverage Tax Program Workload*, as recommended by staff.

Action: Mr. Leonard moved approval of Alternative 1, BCP No. 5, *Ongoing Tire Fee Increase Workload*, as recommended by staff. The motion was seconded by Mr. Chiang. Mr. Leonard withdrew his motion.

Tuesday, August 29, 2006

Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved amended BCP No. 5, *Ongoing Tire Fee Increase Workload*, directing staff to seek a budget act appropriation rather than reimbursement from the CIWMB for the Board's effort to administer the tire recycling fee.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved Alternative 1, BCP No. 6, *Electronic Waste (Ewaste) Recycling Fee Workload Adjustment*, as recommended by staff.

Action: Mr. Leonard moved to revise BCP No. 7, *International Fuel Tax Agreement (IFTA) Workload Growth*, to support eleven 3-year limited-term positions. Ms. Yee made a substitute motion to support three 3-year limited-term positions and eight permanent positions. The substitute motion was seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved Alternative 1, BCP No. 8, *Underground Storage Tank Fee Workload Increase*, with revisions to include language regarding the Board having been under-funded for the workload since 1989-90 fiscal year.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved Alternative 1, BCP No. 9, *Continuation of International Fuel Tax Agreement (IFTA)/North America Free Trade Agreement (NAFTA) Interim Program*, as recommended by staff.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved Alternative 1, BCP No. 10, *Fuel Taxes Division- Fuel Tax Compliance Projects*, as recommended by staff.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved Alternative 1, BCP No. 11, *Motor Vehicle Fuel Audit Staff Augmentation*, as recommended by staff.

FINAL ACTION ON SPECIAL TAXES APPEALS HEARING HELD AUGUST 29, 2006

Qwest Communications Corporation, 246379 (ET)

Action: Mr. Leonard moved to grant the petition. Mr. Chiang made a substitute motion to grant the petition as to the USF and TRS, and deny the petition as to the access line charge. The substitute motion was seconded by Mr. Leonard but failed to carry, Mr. Chiang and Mr. Leonard voting yes, Ms. Yee and Ms. Mandel voting no, Mr. Parrish absent.

The Board deferred consideration to the afternoon.

Tuesday, August 29, 2006

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 11:22 a.m. and reconvened immediately in closed session with Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss pending litigation (Govt. Code § 11126(e)) and personnel matters (Govt. Code § 11126(a)).

The Board recessed at 11:35 a.m. and reconvened immediately in open session with Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel present.

The Board recessed at 11:36 a.m. and reconvened at 1:33 p.m. with Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel present.

FINAL ACTION ON SPECIAL TAXES APPEALS HEARING HELD AUGUST 29, 2006

Qwest Communications Corporation, 246379 (ET)

Final Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 21 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

BOARD COMMITTEE REPORTS

Business Taxes Committee

Action: Upon motion of Ms. Yee, seconded by Mr. Chiang and duly carried, Mr. Chiang, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard voting no, Mr. Parrish absent, the Board approved the Business Taxes Committee report (Exhibit 8.10).

The Board adjourned at 1:35 p.m.

The foregoing minutes are adopted by the Board on November 21, 2006.

Note: The following cases were removed from the calendar prior to the meeting: *Deirdre M. Osterman*, 290241; *Richard Charles Walton*, 310562; *Sierra Railroad Company*, 288213; *Greyhound Lines, Inc.* 281179, 327799; and, *Lynne Meredith*, 241993.